

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

WALTER L. WILLIAMS,

Petitioner,

v.

Case No: 5:21-cv-365-TPB-PRL

WARDEN, FCC COLEMAN –
LOW,

Respondent.

ORDER OF DISMISSAL

Petitioner initiated this civil action by filing a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 1). Petitioner argues he is entitled to a reduction of his federal criminal sentence because the imposed Armed Career Criminal Act sentencing enhancement has been found unconstitutional in *Borden v. United States*, 141 S. Ct. 1817 (2021), (*id.* at 6).

Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that “[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.” *See also* Rule 12, Rules Governing Section 2255 proceedings. The Eleventh Circuit has held that 28 U.S.C. § 2241 is not available to challenge the validity of a sentence except on very narrow grounds. *McCarthan v. Director of Goodwill Industries-Suncoast, Inc.*, 851 F.3d 1076, 1079 (11th Cir. 2017); *Bernard v. FCC Coleman Warden*, 686 F.

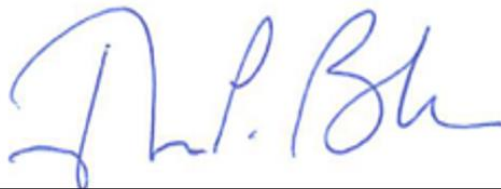
App'x 730 (11th Cir. 2017) (citing *McCarthan*, 851 F.3d at 1092-93). None of those grounds are present in this case, and thus Petitioner is not entitled to proceed under § 2241. *See, e.g., In re Albertie*, No. 21-12796-H (11th Cir. Aug. 30, 2021) (Rosenbaum, J., concurring) (“And in this Circuit, Albertie’s [*Borden*] claim is not cognizable under 28 U.S.C. § 2255(e), either because in *McCarthan*[,] by which we are bound, we held that a prisoner may file a second or successive claim for habeas relief, challenging his conviction through that subsection only when the sentencing court is unavailable.”). Thus, this case is due to be dismissed.

Accordingly, it is

ORDERED and ADJUDGED:

This case is **DISMISSED without prejudice**. The **Clerk** shall enter judgment accordingly, terminate any pending motions, and close this case.

DONE AND ORDERED at Tampa, Florida, this 21st day of September, 2021.



TOM BARBER
UNITED STATES DISTRICT JUDGE

Jax-7

C: Walter L. Williams, 53136-018